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No. 83-54

In the Supreme Court of the United States

OCTOBER TERM, 1983

EMMA F. LOPEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that assisting in the procurement of a false state birth certificate does not constitute a violation of 18 U.S.C. 1425, which prohibits the "knowing[] * * * procure[ment] * * * or * * * attempt[] to procure * * * any certificate or evidence of * * * citizenship" for a person not entitled thereto.

1. Upon her plea of guilty in the United States District Court for the Southern District of Texas, petitioner was convicted of knowingly procuring, obtaining, or applying for citizenship or documentary evidence of citizenship for one not entitled to it, in violation of 18 U.S.C. 1425. She was fined $3000 and sentenced to four years' imprisonment, which sentence was suspended in favor of five years' probation. After petitioner violated the conditions of her probation, the district court modified the sentence to require service of a six-month term of imprisonment. Pet. App. A1,

A4. Petitioner then moved to set aside her conviction pursuant to 28 U.S.C. 2255. The district court denied the petition, and the court of appeals affirmed. Pet. App. A1-A17.

The facts of the case, which are undisputed, are set out in the court of appeals' opinion. Briefly, petitioner, a midwife in Laredo, Texas, assisted Leonarda Vigil in obtaining a Texas birth certificate for Vigil's Mexican-born son, in exchange for $200. Pet. App. A1-A2.

2. Petitioner contends (Pet. 4-9) that the courts below erred in holding that the fraudulent procurement of a state birth certificate constitutes a violation of federal law, specifically, 18 U.S.C. 1425. She acknowledges (Pet. 4), however, that this question is one "of first impression in any circuit." There accordingly is no conflict among the courts of appeals that warrants this Court's intervention. In any event, even putting to one side questions regarding the propriety of raising this issue in a collateral attack after having failed to appeal the conviction, petitioner's claim is wholly without merit.

At the outset, petitioner's argument is foreclosed by the unambiguous statutory language. Section 1425(b) expressly proscribes the "attempt[] to procure or obtain * * * citizenship, * * * or any certificate or evidence of * * * citizenship * * *." A state birth certificate is not merely a record of registration of birth in the issuing jurisdiction; it is also a "certificate or evidence of * * * citizenship" of the United States. See *United States* v. *Henry*, 604 F.2d 908, 916 (5th Cir. 1979) (construing 18 U.S.C. 911); *United States* v. *Rodriguez Serrate*, 534 F.2d 7, 11 (1st Cir. 1976) (construing 18 U.S.C. 1015(c)).[1] Petitioner's suggestion (Pet. 5-6)

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[1]Petitioner concedes (Pet. 8) that the use of a false state birth certificate may provide the basis for a conviction under 18 U.S.C. 911 for false representation of citizenship. It follows *a fortiori* that a state birth certificate may constitute "evidence of * * * citizenship."

that the procurement of a false birth certificate is not within the reach of 18 U.S.C. 1425 because such documents are not expressly mentioned therein is specious; had Congress intended to list every document covered by the statute, it would not have been necessary to add the phrase "*any* certificate or evidence of * * * citizenship" (emphasis added).

Petitioner further contends (Pet. 6-8) that the legislative history shows that Section 1425 was not meant to apply to falsified birth certificates. Because, as we have shown above, the plain language of the statute encompasses the knowing procurement of false proof of citizenship, including birth certificates, resort to the legislative history is largely unnecessary. In any event, the court of appeals undertook a thorough review of that history (Pet. App. A9-A15) and correctly rejected petitioner's claim.

As the court of appeals observed (Pet. App. A9), 18 U.S.C. 1425 derives from two major revisions of the immigration laws, the Naturalization Act of 1906, ch. 3592, 34 Stat. 596 *et seq.*, and the Nationality Act of 1940, ch. 876, 54 Stat. 1137 *et seq.* The court of appeals further noted (Pet. App. A11-A15) that, although the earlier legislation "dealt exclusively with naturalization," the statute was comprehensively amended and rewritten in 1940, at which time the language referring to citizenship — *i.e.*, nationality at birth — and "certificate of citizenship, or other documentary evidence of naturalization or citizenship" (§§ 201 and 346(a)(5), 54 Stat. 1138 and 1164) was specifically added. It strains credulity to suggest, as petitioner does, that the Congress that added this language did not intend it to apply to birth certificates. The legislative history thus provides no support for petitioner's position; even viewed most favorably to petitioner, it evinces no " 'clearly expressed legislative intent' " sufficient to override the plain language of the statute. See *United States* v. *Turkette*, 452 U.S. 576, 580 (1981) (citation omitted).

Finally, it is wholly irrelevant that the State of Texas "has provided penal sanctions for the furnishing of false information pertaining to birth records" (Pet. 9). The provisions on which petitioner relies (*ibid.*), which were enacted to enforce Texas's "Sanitary Code," obviously are not addressed to the federal concerns of citizenship and naturalization. As the court of appeals observed (Pet. App. A16):

> [A]lthough the registration of state birth certificates is traditionally regulated by state law, a violation of the immigration laws has long been considered a federal offense. Moreover, the mere fact that a state criminal statute covers certain activities does not preclude the [C]ongress from making the same activities a federal crime.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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[2]Petitioner's heavy reliance (Pet. 4-6, 8) on *Williams* v. *United States*, No. 80-2116 (June 29, 1982), is wholly misplaced. As the court of appeals observed (Pet. App. A16), by contrast to the situation in *Williams*, there is no statutory ambiguity here. Indeed, the court of appeals' construction of the statute at issue in this case fully satisfies all of the criteria set forth in *Williams* (slip op. 11) and recited by petitioner (Pet. 5): the plain language of the statute encompasses petitioner's conduct; the legislative history evinces no contrary purpose; the proposed construction would not render a wide range of conduct violative of federal law; and the prohibition of falsified evidence of citizenship is not a matter traditionally regulated by state law.

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